

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,
v.

NEW VENTURES ASSOCIATES, LLC,

Defendants.

**COMMONWEALTH'S MOTION FOR ORDER GRANTING SITE ACCESS TO
PERFORM RESPONSE ACTIONS UNDER G. L. c. 21E**

The plaintiff, the Commonwealth of Massachusetts, by and through the Attorney General on behalf of the Massachusetts Department of Environmental Protection (the "Department") now moves this honorable Court for an order allowing the Department to enter upon the Crow Lane Landfill, which is owned and operated by defendant New Ventures Associates, LLC ("New Ventures") and located at Crow Lane in Newburyport, Massachusetts (the "Landfill" or "Site") for the purpose of conducting certain response actions pursuant to G.L. c. 21E and 310 C.M.R. 40.0000.

For all the reasons set forth in the memorandum of law submitted in support of this motion, these response actions are immediately required to prevent and control noxious hydrogen sulfide gas releases from the Landfill that are creating a public nuisance and threatening the public health, safety, and welfare. The response actions, which are set forth in the attached proposed order, include placing a temporary cap over part of the landfill releasing high concentrations of hydrogen sulfide gas, installing three new collection wells to better control gas releases, and sampling and analyzing soils to determine the stability of the landfill's perimeter berm.

The Department, consistent with its authority and civic responsibilities under G.L. c. 21E, notified the Landfill that it intends to conduct these necessary response actions to eliminate the continuing health threat posed by the releases of hydrogen sulfide gas at and from the Landfill unless New Ventures commits to performing the same response actions. New Ventures responded by refusing to conduct the required response actions and by refusing to permit the Department access to conduct those actions.

Hence, this Court should grant the Commonwealth's motion for entry onto the Site for the purpose of performing the response actions set forth in the proposed Order, attached as "Exhibit 1." Unless the Court grants the requested relief, serious odor problems will continue to plague the residents living near the landfill. All of the requested relief is in the public interest because it will control or eliminate a public nuisance and threat to the public health, safety and welfare.

Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

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Dated: July 27, 2007

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PROPOSED ORDER

This matter came before the Court for hearing on the motion of the plaintiff Commonwealth of Massachusetts, by and through the Attorney General on behalf of the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) for an order permitting the Department to enter upon the Crow Lane Landfill (“Landfill”) owned and operated by defendant New Ventures Associates, LLC (“New Ventures”) and to thereon conduct certain response actions pursuant to G.L. c.21E and 310 CMR 40.0000; and

WHEREUPON it appearing to the Court that the relief requested by the plaintiff serves the public interest because it will control or eliminate a public nuisance and threat to the public health, safety and welfare,

IT IS ORDERED:

1. That the MassDEP and its authorized personnel, agents and contractors may enter the Landfill and areas proximate thereto owned or operated by the defendant and undertake such response actions relative to the

assessment, containment and removal of hazardous materials, including landfill gas, Hydrogen Sulfide gas and/or leachate, as MassDEP reasonably deems necessary. Such response actions including the following:

- A. Placement of a temporary cap on the Phase I Area of the Landfill that consists of at least one (1) foot of low permeability soil that meets the standard for intermediate cover pursuant to 310 CMR 19.130(15)(d)3.a;
- B. Installation of three landfill gas extraction wells, EW-7, EW-10 and EW-13, and completion of the landfill gas system header (piping) as authorized by MassDEP's June 27, 2007 email to defendant's counsel, Mr. Richard A. Nylen, Jr.;
- C. Adjustment, modification and operation of the landfill gas system in order to maximize the radius of influence of the landfill gas extraction wells, reduce infiltration of ambient air, and otherwise optimize the operation of the landfill gas system in order to control the emission of landfill gas and Hydrogen Sulfide gas; and
- D. Installation of soil borings into the existing perimeter berm to permit further evaluation of defendant's proposed revisions to the berm design and to enable MassDEP to issue a final approval of the landfill closure.

Justice, Superior Court

Date

Attest:

Assistant Clerk

Date